

————— **LEGAL RESPONSIBILITIES OF ADVISORY BOARDS** —————

Advisory boards are limited in authority, and consequently in legal responsibility, to those powers granted by the local government.

————— **LEGAL RESPONSIBILITIES OF GOVERNING BOARDS** —————

Public library trustees must know and accept their legal responsibilities as governing agents of the library. Trustees need to be aware of general legal requirements, strive to act within the law, and seek expert assistance as appropriate.

Governing library trustees acquire their position through state law and, as such, are public officials. As with any public official, the appointment carries with it certain basic legal responsibilities:

- maintaining good faith with constituency
- obeying federal, state, and local laws
- accepting office, including all its power and obligations
- showing diligence in the job
- managing property and finances for the constituency served
- making proper choice of library director

As a trustee, you hold a public trust for the citizens and taxpayers of the community served. When you accept this office, you also accept duties and responsibilities. You should understand that your board's decisions are subject to public scrutiny and to challenge in court. This makes fulfilling the board's legal duties in a responsible manner of the utmost importance. Review carefully the areas of liability and the guidelines for preserving the public trust.

AREAS OF LIABILITY

- **Acts in excess of authority.** Boards can be sued if they or their employees make errors when they act outside the scope of their library authority (example: exercising censorship).
- **Nonfeasance.** Boards can be held liable for failing to act when action was required or failing to stop an illegal action (examples: failure to get copyright clearance for cassette duplication, failure to complete any contract as agreed upon).
- **Negligence.** Boards can be held liable for the negligence of the administrator, staff, or themselves (examples: unsafe buildings and grounds, failure to supervise funds).
- **Intentional tort.** Boards can find themselves liable for statements made in haste or for angry actions of another trustee or staff member (examples: libel, assault, improper discharge of an employee).

- **Unintentional tort.** Boards can be held liable when a member of the board or the staff in good faith accuses a person of committing a crime but is mistaken in judgment or identification.
- **Acts in contradiction to the law.** Boards can find they are liable for failure to act in compliance with state statutes or administrative rules (examples: purchasing property without bidding, tailoring specifications to a specific bidder, conducting business at meetings that are not open to the public, improper reimbursement to trustees or employees).

DEFENSES FOR LIABILITY

Boards can lessen the possibility of liability through the following actions:

- Encourage all trustees to attend board meetings, study the issues, ask questions, vote, monitor progress, and maintain active committees.
- Abide by the time limits of the terms of office for trustees specified in the *Virginia Code*. Replace trustees who do not participate or attend.
- Keep all library board meetings open to the public as required by the Virginia Freedom of Information Act and make sure advance notice of board meetings is given to the public.
- Read the minutes and make corrections.
- Vote against proposed action if convinced there is insufficient information on which to base an opinion; make sure minutes reflect that vote. When abstaining until more information is provided, follow up on the issue and let the record show that you abstained and the reason.
- Use a qualified attorney for all legal matters and controversial issues.
- Adopt written rules, regulations, and policies and keep them up-to-date. Publicly post rules, regulations, and meeting minutes to avoid any charge that the information is being kept secret.
- Publish minutes in newspapers or the library's newsletter or post them on a library bulletin board to educate the public and to provide a continuous public record of board actions.
- Adopt rules, regulations, policies, and budgets formally by use of a motion, second, and documentation in board minutes. Hold public hearings as needed.
- Refuse to allow any existence of conflicts of interest on the board. Write a letter of protest for the record if conflicts are occurring. (examples: a trustee of the library being reimbursed as the board's attorney, investment advisor, banker, insurance consultant, accountant, or purveyor of goods and services that the library buys.) A general rule is that a trustee may not receive any profit whatsoever in dealing with the library.
- Unless local government audits the library, require and obtain a certified public accountant audit once a year.

INDEMNIFICATION

Although suits brought against library board members are not common occurrences, members are at some risk and should seek to protect themselves. The library board should check with the local governing authority to determine if members are shielded from personal liability. If the board does not have statutory protection, it should investigate other options. Libraries established under the corporate structure will need to determine if individual board members are liable for damage caused by the corporation. Some library boards protect themselves by purchasing director liability insurance for members and employees.

The American Library Trustee Association (ALTA) developed and approved the following indemnification statement:

It should be considered mandatory that every library have an adequate level of insurance coverage. If any claim or action not covered by insurance or state statute is instituted against a trustee, officer, employee or volunteer of the library system arising out of an act or omission by a trustee, officer, employee, or volunteer acting in good faith for a purpose considered to be in the best interest of the system, or if any claim or action not covered by insurance or state statute is instituted against a trustee, officer, employee, or volunteer allegedly arising out of an act or omission occurring within the scope of his or her duties as such a trustee, officer, employee, or volunteer, the system should at the request of the trustee, officer, employee, or volunteer:

- a) appear and defend against the claim or action, and
- b) pay or indemnify the trustee, officer, employee, or volunteer for a judgment and court costs, based on such claim or action, and
- c) pay or indemnify the trustee, officer, employee or volunteer for a compromise or settlement of such claim or action, providing the settlement is approved by the board of trustees.

Decision as to whether the system shall retain its own attorney or reimburse the trustee, officer, employee, or volunteer expenses for their own legal counsel shall rest with the board of trustees and shall be determined by the nature of the claim or action.

The term trustee, officer, employee or volunteer shall include any former trustee, officer, employee or volunteer of the system.

Does your board have legal counsel?

Do you understand your legal responsibilities as a board member?

SUMMARY OF LEGAL RESPONSIBILITIES OF GOVERNING BOARDS

Board of Trustees⁵

Seeks cooperation with officials of the governing agency, keeping in mind the special legal obligations of the board.

Attends and participates knowledgeably in all board meetings and decisions to assure conformity with legal responsibilities.

Follows appropriate procedures and laws for budgeting, contracting, hiring, and auditing, etc., and avoids conflict-of-interest situations. Prepares all needed library reports for local government and the Library of Virginia. Provides copies to the board and the community.

Library Directors⁶

Attends board meetings and suggests legal review or counsel on appropriate board actions.

Advises the board on compliance with relevant procedures and laws and potential conflicts of interest.

Joint Responsibilities

Knows, studies, and abides by all local, state, and federal laws that affect public libraries and empower boards of trustees.

Note especially these laws in the *Code of Virginia*:

- §42.1-33–§42.1-59 (Public Library Laws)
- §2.2-3700–§2.2-3714 (Freedom of Information Act)
- §2.2-4300–§2.2-4377 (Virginia Public Procurement Act)
- §2.2-3800–§2.2-3809 (Privacy Protection Act)
- §42.1-72–§42.1-74.1 (Library Offenses)
- §58.1-601–§58.1-636 (Virginia Retail Sales and Use Tax Act)

⁵ These roles and responsibilities are primarily for governing boards. Advisory boards' roles and responsibilities may be different.

⁶ Ibid.

